



Republic of the Philippines
Supreme Court
Manila

EN BANC

WALTER MANUEL F. PRESCOTT,
Petitioner,

G.R. No. 262938

Present:

-versus-

BUREAU OF IMMIGRATION, as
represented by HON. ROGELIO D.
GEVERO, JR., and the
DEPARTMENT OF JUSTICE,
Respondents.

GESMUNDO, C.J.,
LEONEN,
CAGUIOA,
HERNANDO,
LAZARO-JAVIER,
INTING,
ZALAMEDA,*
LOPEZ, M.,
GAERLAN,
ROSARIO,
LOPEZ, J.,
DIMAAMPAO,**
MARQUEZ,**
KHO, JR., and
SINGH, JJ.

Promulgated:

December 5, 2023

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DECISION

LAZARO-JAVIER, J.:

The Case

This Petition for Review on *Certiorari*¹ assails the following dispositions of the Court of Appeals in CA-G.R. SP No. 161957, viz.:

* No part and on official leave.

** On official leave.

*** No part and on official business.

¹ *Rollo*, Vol. 1, pp. 3-40.

- 1) Decision² dated June 25, 2021, denying the appeal of petitioner Walter Manuel E. Prescott (Prescott) and sustaining the Order of Deportation issued by the respondent Bureau of Immigration (Bureau) against him; and
- 2) Resolution³ dated August 15, 2022, denying Prescott's Motion for Reconsideration.

Antecedents

This case emanated from a Petition for Declaratory Relief with Petition for *Habeas Corpus* filed by Prescott before Regional Trial Court, Branch 10, Manila City. The facts are undisputed.

Prescott was born on April 10, 1950 in the Philippines to an American father, Walter Dewey Prescott, and a Filipino mother, Hilda Fernandez. On January 12, 1951, he was issued an Alien Certificate of Registration⁴ (ACR) by the Bureau. He never left the Philippines since he was born. He pursued his education and his career in the country. Under letter dated August 26, 1977, he was informed by the American Embassy in Manila that he lost his American citizenship as of April 10, 1976 for overstaying in the Philippines.⁵

On May 17, 1981, he married Maria Lourdes S. Dingcong (Lourdes), an American citizen, in Quezon City, Philippines. In their Marriage Contract, he indicated his nationality as Filipino.⁶ On December 10, 1981, the couple had their first child named Jeffrey Manuel D. Prescott (Jeffrey). Notably, in Jeffrey's Certificate of Live Birth, Prescott's nationality was also indicated as Filipino.⁷

On November 11, 1982, he left Manila for the United States of America (USA) for the first time with Jeffrey. In 1983, he started working for the World Bank in Washington D.C., USA as a temporary employee. In 1986, Prescott and Lourdes had their second child, Dexter Ezekiel D. Prescott, and in 1988, their third child, Dana Marie D. Prescott, was born. Both were born in the USA.

² *Id.* at 46–65. Penned by Associate Justice Ronaldo Roberto B. Martin and concurred in by Associate Justices Marlene B. Gonzales-Sison and Alfredo D. Ampuan of the Eight Division, Court of Appeals, Manila.

³ *Id.* at 67–69. Penned by Associate Justice Ronaldo Roberto B. Martin and concurred in by Associate Justices Marlene Gonzales-Sison and Alfredo D. Ampuan of Former Eighth Division, Court of Appeals, Manila.

⁴ *Id.* at 195.

⁵ *Id.* at 7, 196.

⁶ *Id.* at 197.

⁷ *Id.* at 198.

On July 15, 1999, Prescott got a permanent employment with the World Bank. On August 5, 2006, he became a naturalized American citizen. Consequently, an American passport was issued to him. Using the same, he travelled back to the Philippines in 2007, 2008, and 2009 with a "*balikbayan*" status.⁸

On November 26, 2008, Prescott applied for reacquisition of his Philippine citizenship under Republic Act No. 9225.⁹ In his application, he clearly indicated the nationality of his father as American while he disclosed that he (Prescott) obtained American citizenship through naturalization.¹⁰ The Embassy of the Republic of the Philippines to the USA, through Consul General Domingo P. Nolasco, issued an Order (For Reacquisition of Philippine Citizenship)¹¹ in favor of Prescott on even date. The Department of Foreign Affairs (DFA), through Assistant Secretary Jamie Victor Ledda, confirmed Prescott's application for dual citizenship under Republic Act No. 9225 at the Philippine Embassy in Washington D.C., USA. Prescott thereafter took his oath of allegiance to the Republic of the Philippines.¹² He was issued Identification Certificate No. WDC-2008-00688, recognizing him as a Philippine citizen pursuant to his reacquisition of citizenship.¹³

On September 1, 2009, Prescott filed his application for Philippine passport, indicating therein the citizenship of his father as American and his mother as Filipino. As regards how he acquired Philippine citizenship, he checked the box corresponding to Republic Act No. 9225. He was consequently issued a Philippine passport.¹⁴ Sometime in 2010, Prescott retired from the World Bank. He immediately returned to the Philippines with his wife, Lourdes, to settle for good. In January 2011, Lourdes went back to the USA.¹⁵

On June 6, 2012, Lourdes, with one Jesse Troutman (Troutman), filed with the Bureau a joint letter of complaint against Prescott, alleging that he illegally reacquired his Philippine citizenship. Several notices were allegedly sent to Prescott's supposed address at Lagusan Drive, Barangay Francisco, Tagaytay City, asking him to appear on the scheduled hearings from July 10, 2012 to September 20, 2012 regarding the complaint. Prescott, however, failed to appear. Per the minutes of the hearings, the notices were returned "unserved" or Prescott was "out of the country."¹⁶

⁸ *Id.* at 7-8, 149-150.

⁹ Otherwise known as the Citizenship Retention and Reacquisition Act.

¹⁰ *Rollo*, Vol. 1, p. 204.

¹¹ *Id.* at 206.

¹² *Id.* at 358-359.

¹³ *Id.* at 208.

¹⁴ *Id.* at 307, 348.

¹⁵ *Id.* at 307.

¹⁶ *Id.* at 307-308.

Sometime in 2013, Lourdes filed for partial divorce in the USA against Prescott. In January 2013, Prescott filed for declaration of nullity of marriage before the Regional Trial Court for Bacoor, Cavite. On October 17, 2013, the Bureau issued a Resolution ordaining that Prescott is an American citizen, having been born to an American father and a Filipino mother on April 10, 1950 under the 1935 Constitution. As it was not shown that he elected Philippine citizenship upon reaching 21 years old, his alien registration with the Bureau was never cancelled and he therefore cannot be considered a natural-born Filipino citizen. In fine, he was ineligible to re-acquire Philippine citizenship under Republic Act No. 9225.¹⁷

On October 21, 2013, by its 1st Indorsement, the Bureau recommended to then Secretary of Justice Leila De Lima (Secretary De Lima) the cancellation of Prescott's re-acquisition of Philippine citizenship. Under Resolution¹⁸ dated November 28, 2013, Secretary De Lima approved the recommendation.

Sometime in February 2014, Prescott went to the DFA to renew his Philippine passport but was denied. It was only then that he learned of the complaint against him and the cancellation of his certificate of re-acquisition of Philippine citizenship.¹⁹

On February 24, 2014, Prescott, through counsel, sent a letter-request to Secretary De Lima, asking to be furnished with the complete records of the case since he never received copies thereof. In response, he was told under letter dated March 4, 2014 that the Department of Justice (DOJ) Resolution dated November 28, 2013 had become final and executory.²⁰ On March 17, 2014, Prescott reiterated his request, but the same was also denied on the same ground.²¹ Until now, no case file or record pertaining to the case was released to him.²²

On February 11, 2015, an Order was issued by the Bureau-Legal Division, directing Prescott to submit his counter-affidavit on the deportation charge against him which was filed as a result of the cancellation of his certificate of re-acquisition of Philippine citizenship. On August 5, 2015, the Bureau issued a charge sheet against him for allegedly misrepresenting himself as Filipino and for fraudulently indicating in his application for Philippine passport that his father was Filipino though he was actually American. Prescott's name was then placed in the Bureau's watchlist.²³ The

¹⁷ *Id.* at 9, 308-309.

¹⁸ *Id.* at 309.

¹⁹ *Id.*

²⁰ *Id.* at 257, 309.

²¹ *Id.* at 310.

²² *Id.*

²³ *Id.*

Bureau issued a deportation order against Prescott under Resolution dated March 29, 2016. A warrant of deportation was issued on August 22, 2016.²⁴

On August 25, 2016, at 9:00 p.m., while Prescott was in a restaurant in Bacoor, Cavite, he was arrested pursuant to the warrant of deportation. He was escorted by six Bureau personnel and brought to Camp Bagong Diwa in Bicutan. On August 30, 2016, he filed a very urgent motion for his release and dismissal of the deportation case against him. On September 8, 2016, the Bureau denied the motion to release [Prescott] on bail and treated his motion to dismiss as a motion for reconsideration of the March 29, 2016 Resolution.²⁵

It was only on October 26, 2016 that Prescott received the charge sheet. Despite the absence of a valid notice and due process, the Bureau denied Prescott's motion to reverse the Resolution dated March 29, 2016, directing his deportation and the Order dated September 8, 2016, denying his motion for bail.²⁶

On May 25, 2017, Prescott filed his motion to re-open his deportation case but the same was denied with finality on October 5, 2017. On August 9, 2018, the National Bureau of Investigation (NBI) informed the Bureau that Prescott allegedly has three criminal cases before the Quezon City Prosecutor's Office for: (1) grave threat; (2) estafa; and (3) grave threat and illegal possession of firearms.²⁷

On September 19, 2018, the NBI replied to the Bureau's letter dated August 9, 2018, stating that Prescott has a derogatory record upon verification with their Master Name Index Files. Consequently, the Bureau informed Lourdes and Troutman's counsel that Prescott could not be deported because of his pending criminal cases before the Quezon City Prosecutor's Office.²⁸ As it turned out, however, there were in truth no criminal cases pending against Prescott.²⁹ Certificates of No Pending Cases for Prescott were subsequently secured from the said offices.³⁰

On October 10, 2018, Ms. Lourdes de Las Cagiga (Ms. Cagiga), on behalf of Prescott who was already 67 years old at the time, sought the assistance of the Public Attorney's Office (PAO). Prescott complained of chest pains, fever, and body aches, and must be brought for hospitalization and treatment. PAO indorsed Ms. Cagiga's letter to the Bureau. On October 12, 2018, Prescott was granted medical pass for confinement at the Medical Center Manila for various medical ailments.³¹

²⁴ *Id.* at 311–312, 410.

²⁵ *Id.* at 312, 418–419.

²⁶ *Id.* at 313.

²⁷ *Id.* at 313–314.

²⁸ *Id.* at 314.

²⁹ *Id.*

³⁰ *Id.*

³¹ *Id.* at 13.

On December 4, 2018, Prescott filed his Memorandum to the Secretary of Justice, which was deemed an appeal from DOJ Resolution dated November 28, 2013. Due to his ballooning hospital bills, he also filed with the DOJ on January 31, 2019 a motion to be released on recognizance, attaching the affidavit of undertaking as custodian executed by PAO Chief Persida V. Rueda-Acosta.³² The memorandum and motion have remained unacted upon.³³

Proceedings before the Regional Trial Court

On March 13, 2019, Prescott filed a Petition for Declaratory Relief with Petition for *Habeas Corpus*, which was raffled to Branch 10, Regional Trial Court, Manila City.³⁴ He prayed for two main remedies: (1) to be declared a Philippine citizen through the petition for declaratory relief; and (2) to be released from detention through a writ of *habeas corpus*.³⁵

On March 14, 2019, the trial court issued a writ of *habeas corpus*, requiring Bureau and DOJ to produce the live person of Prescott and to show cause why they are withholding or restraining his liberty.³⁶ Hearings were set on March 18 and 20, 2019. The March 20, 2019 hearing proceeded as scheduled, during which Bureau and DOJ filed their return to the writ with prayer for the dismissal of the petition for alleged lack of merit.³⁷

By Resolution³⁸ dated March 21, 2019, the trial court denied the petition for *habeas corpus*. It held that the remedy of *habeas corpus* was unavailing in view of the deportation order against Prescott which had already attained finality. The proper remedy against the same was thus a petition for review before the Court of Appeals.³⁹ Prescott moved for reconsideration, contending that the application for *habeas corpus* was proper pursuant to the ruling in *Borovsky v. Commissioner of Immigration*,⁴⁰ since the Bureau failed to implement the deportation order against him for almost three years.⁴¹

Under Order dated March 27, 2019, the trial court set another hearing on April 5, 2019 for the Bureau to explain the reason for its failure to implement the deportation order against Prescott despite its finality. During the hearing, the Bureau manifested that it was already processing Prescott's

³² *Id.* at 13–14.

³³ *Id.*

³⁴ *Id.* at 15.

³⁵ *Id.* at 136.

³⁶ *Id.* at 129.

³⁷ *Id.* at 135.

³⁸ *Id.* at 129–130. Penned by Acting Presiding Judge Danilo D. Leyva, Branch 10, Regional Trial Court, Manila.

³⁹ *Id.* at 130.

⁴⁰ 84 Phil. 161 (1949) [Per J. Bengzon, *En Banc*].

⁴¹ *Rollo*, Vol. I, p. 136.

deportation and has requested the US Embassy for issuance of the corresponding travel documents for him.⁴²

Ruling of the Regional Trial Court

By Decision⁴³ dated May 24, 2019, the trial court denied the petition for declaratory relief and modified its ruling as regards the petition for *habeas corpus*, to wit:

WHEREFORE, premises considered, judgment is hereby rendered:

- (1) Denying petitioner WALTER MANUEL F. PRESCOTT's petition for declaratory relief for lack of merit; and
- (2) On the petition for habeas corpus, respondent Bureau of Immigration and the Department of Justice are hereby given a period of thirty (30) days from receipt of this Order to implement the deportation order against petitioner D.C. No. SBM/LD-15-08/07-659. Should respondents fail to deport petitioner after the expiration of the given period, they are hereby directed to immediately release from their custody the person of petitioner.

SO ORDERED.⁴⁴

Foremost, the trial court pointed out that the second requisite necessary for a declaratory relief is absent, i.e., that there must have been no breach of the document in question. As it was, the Order dated November 26, 2008 granting Prescott's application for re-acquisition of Filipino citizenship had already been revoked DOJ Resolution dated November 28, 2013. More, it ordained that the actual purpose of Prescott's petition was not to obtain a declaration on his citizenship but to annul DOJ Resolution dated November 28, 2013 which revoked his Philippine citizenship. The same, however, cannot be done without violating the doctrine of immutability of judgment.⁴⁵

Meanwhile, it agreed that the remedy of *habeas corpus* was proper considering the Bureau's unreasonable delay in implementing the deportation order. It nonetheless ordered the Bureau to implement the same within 30 days from receipt of the Order, failing which, Prescott shall be released from their custody.⁴⁶ Prescott appealed.

Ruling of the Court of Appeals

⁴² *Id.*

⁴³ *Id.* at 131-140.

⁴⁴ *Id.* at 139-140.

⁴⁵ *Id.* at 136-138.

⁴⁶ *Id.* at 139.

By Decision⁴⁷ dated June 25, 2021, the Court of Appeals affirmed, viz.:

WHEREFORE, premises considered, the present appeal is **DENIED**. Accordingly, the PAO is **IMMEDIATELY DIRECTED** to turn over the actual and physical custody of appellant to the Bureau of Immigration and Department of Justice and to cooperate with the said government agencies for an orderly execution of appellant's deportation.

The Bureau of Immigration and Department of Justice is **ORDERED** to enforce the Order of Deportation (D.C. No. SBM/LD-15-08/07-659) against appellant WALTER MANUEL F. PRESCOTT within 30 days from receipt of the Decision in this case and to submit a Report to this Court immediately thereafter.

SO ORDERED.⁴⁸ (Emphasis in the original)

The Court of Appeals ordained that the revocation of Prescott's certificate of reacquisition of Philippine citizenship was a direct attack on his citizenship. The Bureau is the agency tasked to hear and decide complaints regarding applications under Republic Act No. 9225, which were filed through fraud, misrepresentation, or concealment. The DOJ, on the other hand, is empowered to revoke the order of approval for reacquisition should a person be found to have illegally reacquired his or her Philippine citizenship.⁴⁹

As to the merits, it ruled that Prescott was never a natural-born Filipino since he was born under the 1935 Constitution. Considering that he failed to elect Philippine citizenship upon reaching the age of 21 nor even 50 years thereafter, he never acquired Philippine citizenship and is thus not qualified to re-acquire the same.⁵⁰ More, he chose the wrong mode of review in appealing the DOJ Resolution dated November 28, 2013, which has long attained finality.⁵¹ Finally, the Court of Appeals sustained Prescott's detention since he is purportedly an overstaying and undocumented alien who committed misrepresentations to acquire Philippine citizenship.⁵²

By Resolution⁵³ dated August 15, 2022, the Court of Appeals denied Prescott's motion for reconsideration.

The Present Petition

Prescott now seeks affirmative relief from the Court and prays that the assailed dispositions of the Court of Appeals be reversed and a new one

⁴⁷ *Id.* at 46–65.

⁴⁸ *Id.* at 64.

⁴⁹ *Id.* at 56–58.

⁵⁰ *Id.* at 61.

⁵¹ *Id.* at 62–63.

⁵² *Id.* at 64.

⁵³ *Id.* at 67–69.

rendered, ordering his release from detention and declaring him a Philippine citizen.⁵⁴

By Resolution⁵⁵ dated February 20, 2023, the Court: (1) directed the Office of the Solicitor General (OSG) to file its Comment to the Petition; and (2) set the case for hearing on February 27, 2023. On February 23, 2023, the OSG filed its Comment followed by a Supplemental Comment. Prescott filed his Reply. The hearing initially set on February 27, 2023 was subsequently rescheduled and held on March 13, 2023. Thereafter, the parties were required to submit their respective memoranda within 20 days from the adjournment of the hearing. Both parties were able to submit their respective memoranda on time.

In his Memorandum⁵⁶ dated March 31, 2023, Prescott maintains that Lourdes and Troutman's complaint against him is a collateral attack on his Philippine citizenship. For the DOJ is only empowered to revoke the reacquisition of Philippine citizenship in cases of fraud, misrepresentation, and concealment. Here, however, the basis invoked against him was the fact that he was born to a Filipino mother and an American father under the 1935 Constitution. Verily, his citizenship ought to have been questioned through judicial remedies and not merely through a letter-complaint.⁵⁷

At any rate, the fact that his application for reacquisition of Philippine citizenship was granted means that he has always been Filipino. The Order granting his application enjoys the presumption of regularity and authenticity while the supporting documents attached indubitably show that he is the son of a Filipino mother, thus, a natural-born Filipino.⁵⁸ He argues that upon the revocation of his American citizenship in 1977, he did not become stateless but was considered a Philippine citizen under the 1973 Constitution.⁵⁹

He insists, too, that he availed of the proper remedy through his Petition for Declaratory Relief.⁶⁰ As his right to due process was seriously transgressed when he was never furnished notices of the Bureau proceeding, the DOJ Resolution dated November 28, 2013 revoking his reacquisition of Philippine citizenship is therefore void. Accordingly, there was never a breach to speak of, contrary to the ruling of the trial court.⁶¹ The petition for *habeas corpus* is also proper as he remains detained for an unreasonable period of time despite the finality of the deportation order against him.⁶² Finally, he maintains that

⁵⁴ *Id.* at 38.

⁵⁵ *Id.* at 498.

⁵⁶ *Rollo*, Vol. 2, pp. 1091–1187.

⁵⁷ *Id.* at 1124–1130.

⁵⁸ *Id.* at 1140.

⁵⁹ *Id.* at 1141–1142.

⁶⁰ *Id.* at 1166–1167.

⁶¹ *Id.* at 1130–1132.

⁶² *Id.* at 1162–1166.

he is not an overstaying or an undocumented alien. Nor did he misrepresent any factual information to acquire Philippine citizenship.⁶³

By its Memorandum⁶⁴ dated March 27, 2023, the OSG counters that the Bureau and the DOJ are clothed with jurisdiction to cancel the decree of reacquisition of Philippine citizenship granted to Prescott under the 2008 Revised Rules Governing Philippine Citizenship. It is evident that the proceedings before the Bureau and the final revocation of his citizenship by the DOJ, through Resolution dated November 28, 2013, are direct attacks on his citizenship.⁶⁵

In any case, the Petition must be dismissed on several procedural grounds: (1) the Bureau and DOJ rulings have attained finality so the petition for declaratory relief and *habeas corpus* are improper remedies;⁶⁶ (2) Prescott failed to exhaust the available administrative remedies in the ordinary course of law;⁶⁷ and (3) the Petition for Review on *Certiorari* raises questions of fact outside the cognizance of a Rule 45 petition.⁶⁸

On the merits, the OSG ripostes that Prescott is not a Filipino since he never elected Philippine citizenship.⁶⁹ He cannot invoke good faith based alone on his belief that he is Filipino since he was in fact issued an ACR.⁷⁰ Neither is he stateless as he is clearly a naturalized American citizen.⁷¹ To be sure, he was afforded due process in the Bureau proceedings as he was even able to file numerous motions for reconsideration before the Bureau and the DOJ.⁷² Lastly, he is not entitled to a writ of *habeas corpus* since his physical custody is neither with the Bureau nor the DOJ but with the PAO.⁷³ The fault in the delay of his deportation lies not with the latter but with the PAO for its adamant refusal to turn him over to Bureau and DOJ.⁷⁴

Issues

1) Is the complaint filed by Lourdes and Troutman a collateral attack on Prescott's citizenship?

2) Are the proceedings before the Bureau and the November 28, 2013 Resolution of the DOJ void for having been rendered without due process?

⁶³ *Id.* at 1159–1160.

⁶⁴ *Rollo*, Vol. 3, pp. at 540–606.

⁶⁵ *Id.* at 559–562.

⁶⁶ *Id.* at 565–570.

⁶⁷ *Id.* at 563–564.

⁶⁸ *Id.* at 570–572.

⁶⁹ *Id.* at 579–584.

⁷⁰ *Id.* at 589–582.

⁷¹ *Id.* at 595–596.

⁷² *Id.* at 596–598.

⁷³ *Id.* at 598–599.

⁷⁴ *Id.* at 600–602.

3) Did Prescott properly avail of the petition for declaratory relief and petition for *habeas corpus*?

4) Is Prescott, who was born under the 1935 Constitution to an American father and a Filipino mother, a natural-born Filipino, hence, eligible to reacquire Philippine citizenship under Republic Act No. 9225?

5) May Prescott be released from detention?

Our Ruling

The Petition is meritorious.

Indeed, as a rule, only questions of law may be raised in Petitions for Review on *Certiorari* under Rule 45. Since the Court is not a trier of facts, it will not entertain questions of fact or recalibrate and weigh all over again the evidence on record, especially where the factual findings of the trial court are affirmed by the appellate court, hence, final, binding, and conclusive.⁷⁵

A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them. The resolution must rest solely on what the law provides on a given set of facts.⁷⁶

Here, it is not the truth or falsity of the facts that is in dispute. Notably, both parties rely on the same set of facts as basis for their respective arguments. They only differ when it comes to the legal conclusion based on the undisputed facts on record, i.e., Prescott insists that he is a Philippine citizen while Bureau and DOJ maintain otherwise. Clearly, the issue before the Court is not one of fact but of law. Nothing thus bars Us from taking cognizance of the Petition and ruling on the issues raised therein.

Lourdes and Troutman's complaint is a direct attack on Prescott's citizenship; the DOJ is empowered to revoke the reacquisition of Philippine citizenship after a hearing before the Bureau

⁷⁵ See *Pascual v. Burgos*, 776 Phil. 167, 182 (2016) [Per J. Leonen, Second Division].

⁷⁶ *Republic v. Caraig*, 887 Phil. 827, 838 (2020) [Per J. Hernando, Second Division].

Settled is the rule that in our jurisdiction, an attack on a person's citizenship is allowed only through a direct action for its nullity.⁷⁷ This precept can be traced back to the case of *Queto v. Catolico*,⁷⁸ where the Court admonished a trial court judge who, *motu proprio*, cancelled the certificates of naturalization of therein petitioners, who had already taken their oath of allegiance, due to alleged procedural infirmities, viz.:

It may be true, as alleged by said respondents, that the proceedings for naturalization were tainted with certain infirmities, fatal or otherwise, **but that is beside the point in this case. The jurisdiction of the court to inquire into and rule upon such infirmities must be properly invoked in accordance with the procedure laid down by law.** Such procedure is the cancellation of the naturalization certificate. [Section 1(5), Commonwealth Act No. 63], in the manner fixed in Section 18 of Commonwealth Act No. 473, hereinbefore quoted, namely, "upon motion made in the proper proceedings by the Solicitor General or his representatives, or by the proper provincial fiscal." In other words, the initiative must come from these officers, presumably after previous investigation in each particular case.⁷⁹ (Emphasis supplied, citations omitted)

Prescott anchors his argument on this exact pronouncement of the Court. He contends that the procedure under Commonwealth Act No. 473⁸⁰ on the cancellation of naturalization certificate⁸¹ and the subsequent appeal to the Supreme Court⁸² is the applicable procedure to assail his re-acquisition of Philippine citizenship under Republic Act No. 9225. Verily, the complaint filed against him before the Bureau was allegedly improper since any attack

⁷⁷ See *Vilando v. House of Representatives Electoral Tribunal*, 671 Phil. 524 (2011) [Per J. Mendoza, *En Banc*], citing *Co v. Electoral Tribunal of the House of Representatives*, 276 Phil. 758 (1991) [Per J. Gutierrez, Jr., *En Banc*].

⁷⁸ 142 Phil. 49 (1970) [Per J. Makalintal, *En Banc*].

⁷⁹ *Id.*

⁸⁰ Otherwise known as the Revised Naturalization Law.

⁸¹ SECTION 18. *Cancellation of naturalization certificate issued.* – Upon motion made in the proper proceedings by the Solicitor-General or his representative, or by the proper provincial fiscal, the competent judge may cancel the naturalization certificate issued and its registration in the Civil Registry:

- a. If it is shown that said naturalization certificate was obtained fraudulently or illegally;
- b. If the person naturalized shall, within the five years next following the issuance of said naturalization certificate, return to his native country or to some foreign country and establish his permanent residence there; Provided, That the fact of the person naturalized remaining for more than one year in his native country or the country of his former nationality, or two years in any other foreign country, shall be considered as prima facie evidence of his intention of taking up his permanent residence in the same;
- c. If the petition was made on an invalid declaration or intention;
- d. If it is shown that the minor children of the person naturalized failed to graduate from a public or private high school recognized by the Office of Private Education of the Philippines, where Philippine history, government and civics are taught as part of the school curriculum, through the fault of their parents either by neglecting to support them or by transferring them to another school or schools. A certified copy of the decree cancelling the naturalization certificate shall be forwarded by the clerk of court to the Department of Interior and the Bureau of Justice; and
- e. If it is shown that the naturalized citizen has allowed himself to be used as a dummy in violation of the Constitutional or legal provision requiring Philippine citizenship as a requisite for the exercise, use or enjoyment of a right, franchise or privilege.

⁸² SECTION 11. *Appeal.* – The final sentence may, at instance of either of the parties, be appealed to the Supreme Court.

against his citizenship ought to have been filed before a court of justice and not before the respondent agencies.⁸³

He is mistaken.

An attack is direct when the object of the action is to annul or set aside such judgment or enjoin its enforcement. On the other hand, an attack is indirect or collateral when, in an action to obtain a *different* relief, an attack on the judgment or proceeding is nevertheless made as *an incident* thereof.⁸⁴ Thus, in previous cases, the Court ordained that the citizenship of the respective respondents may not be assailed in cases for disbarment,⁸⁵ *quo warranto* proceedings,⁸⁶ and election protests,⁸⁷ as the same involve different principal reliefs and merely tangentially touch upon the issue of citizenship.

The same cannot be said here. For the complaint before the Bureau squarely attacked Prescott's reacquisition of Philippine citizenship and directly prayed for its revocation. The ambiguity in Prescott's citizenship was thus not a mere incident but the main issue in the proceeding. Verily, the same was a direct attack on his citizenship.

More, contrary to his argument, the procedure under Commonwealth Act No. 473 is not applicable here for the simple reason that he did not obtain his Philippine citizenship through naturalization. As correctly argued by the OSG, Republic Act No. 9225 governs this case. Relevantly, Administrative Order No. 91, Series of 2004,⁸⁸ clearly designates the Bureau as the agency tasked to implement Republic Act No. 9225 and empowers it to promulgate and issue the law's implementing rules and regulations, thus:

SECTION 1. Implementing Agency – The Bureau of Immigration, in consultation with the Department of Foreign Affairs, the Department of Justice and Office of the Civil Registrar-General, National Statistics Office, is hereby designated as the implementing agency of Republic Act No. 9225.

SECTION 2. Functions – The Bureau of Immigration, shall:

- a. Promulgate and issue rules and regulations implementing the provisions of the Citizenship Retention and Reacquisition Act of 2003[;]

Pursuant to its delegated quasi-legislative power, the Bureau issued Memorandum Circular No. MCL-08-005 or the 2008 Revised Rules

⁸³ *Rollo*, Vol. 1, p. 302.

⁸⁴ *See Hortizuela v. Tagufa*, 754 Phil. 499, 506 (2015) [Per J. Mendoza, Second Division].

⁸⁵ *See Vazquez v. Atty. Kho*, 789 Phil. 368 (2016) [Per C.J. Sereno, First Division].

⁸⁶ *See Vilando v. House of Representatives Electoral Tribunal*, 671 Phil. 524 (2011) [Per J. Mendoza, *En Banc*].

⁸⁷ *See Co v. Electoral Tribunal of the House of Representatives*, 276 Phil. 758 (1991) [Per J. Gutierrez, Jr., *En Banc*].

⁸⁸ Designating the Bureau of Immigration as the Implementing Agency of Republic Act No. 9225, otherwise known as the "Citizenship Retention and Reacquisition Act of 2003."

Governing Philippine Citizenship under Republic Act No. 9225 and Administrative Order No. 91, Series of 2004, which recognizes the authority of the DOJ to revoke the order of approval granting an application for reacquisition of Philippine citizenship upon a finding of fraud, misrepresentation, or concealment by the applicant, viz.:

SECTION 19. *Exemption from Administrative Review.* —

Retention/Reacquisition of Philippine citizenship under these Rules shall not be subject to the affirmation by the Secretary of Justice pursuant to DOJ Policy Directive of 7 September 1970 and DOJ Opinion No. 108 (series of 1996).

However, the Order of Approval issued under these Rules may be revoked by the Department of Justice upon a substantive finding of fraud, misrepresentation or concealment on the part of the applicant and after an administrative hearing initiated by an aggrieved party or by the BI.

Notwithstanding the exemption from administrative review as provided herein, nothing in these rules shall be construed as to diminish the administrative supervision of the Secretary of Justice over the BI. Consistent with this, the [Bureau] shall submit a monthly report to the DOJ of approved petitions for retention/reacquisition of Philippine citizenship. (Emphasis supplied)

This is consistent with the provisions of the 1987 Administrative Code of the Philippines,⁸⁹ which ordain the Bureau and DOJ to implement the laws governing citizenship and admission and stay of aliens per Book IV, Title III, Chapter I, Section 3 and Chapter 10, Section 31 thereof:

CHAPTER 1
General Provisions

...

SECTION 3. *Powers and Functions.* — To accomplish its mandate, the Department [of Justice] shall have the following powers and functions: ...

(6) Provide immigration and naturalization regulatory services and implement the laws governing citizenship and the admission and stay of aliens[;]

CHAPTER 10
Bureau of Immigration

SECTION 31. *Bureau of Immigration.* — The Bureau of Immigration is principally responsible for the administration and enforcement of immigration, citizenship and alien admission and registration laws in accordance with the provisions of the Philippine Immigration Act of 1940, as amended (C.A. No. 613, as amended). ...

⁸⁹ Executive Order No. 292 (1987).

It is thus clear under the existing law and regulations that the authority to revoke an improperly granted order of approval for re-acquisition of Philippine citizenship under Republic Act No. 9225 lies with the DOJ after the appropriate administrative hearing before the Bureau shall have been conducted. This notwithstanding, the Bureau proceedings against Prescott and the consequent revocation of the decree for re-acquisition of his Philippine citizenship per DOJ November 28, 2013 Resolution are void *ab initio* for having been conducted and issued, respectively, without due process of law..

The Bureau proceedings and the DOJ Resolution dated November 28, 2013 are void ab initio for having been conducted and issued, respectively, in violation of Prescott's constitutional right to due process

The right of the People to due process is enshrined under Article III, Section 1 of the 1987 Constitution, which states that “[n]o person shall be deprived of life, liberty, or property *without due process of law*, nor shall any person be denied the equal protection of the laws.” This right is guaranteed not only in judicial proceedings but also in administrative proceedings.

The observance of fairness in the conduct of any investigation is at the very heart of procedural due process. The essence of due process is the right to be heard. Specifically, in administrative proceedings, the respondent has the right to a fair and reasonable opportunity to explain his or her side, or an opportunity to seek a reconsideration of the action or ruling complained of. Administrative due process, however, is not identical to the due process required in judicial proceedings. For the latter requires a formal or trial-type hearing while the former does not strictly abide by technical rules of procedure.⁹⁰

In fine, as long as the parties are given the opportunity to be heard *before judgment is rendered*, the demands of due process are deemed sufficiently complied with.⁹¹ Conversely, a violation of the right to administrative due process occurs when a court or tribunal rules against a party without giving him or her the opportunity to be heard.⁹² The requirements of administrative due process are thoroughly laid out in the seminal case of *Ang Tibay v. Court of Industrial Relations*,⁹³ viz.:

⁹⁰ See *Vivo v. Philippine Amusement Gaming Corporation*, 721 Phil. 34, 39 (2013) [Per J. Bersamin, *En Banc*].

⁹¹ See *Montemayor v. Bundalian*, 453 Phil. 158 (2003) [Per J. Puno, Third Division].

⁹² See *Office of the Ombudsman v. Conti*, 806 Phil. 384 (2017) [Per J. Mendoza, Second Division].

⁹³ See 69 Phil. 635 (1940) [Per J. Laurel, *En Banc*].

- (1) [T]he right to a hearing must be respected, which includes the right of the party interested or affected to present his [or her] own case and submit evidence in support thereof[;]
- (2) Not only must the party be given an opportunity to present his [or her] case and to adduce evidence tending to establish the rights he [or she] asserts but the tribunal *must consider* the evidence presented[;]
- (3) There must be evidence to support the finding or conclusion of the tribunal;
- (4) Not only must there be evidence to support a finding or conclusion, but the evidence must be substantial. Substantial evidence is such relevant evidence as a reasonable mind would accept as adequate to support a conclusion[;]
- (5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected;
- (6) The tribunal must act on its own independent consideration of the law and facts of the controversy and not simply accept the views of a subordinate in arriving at a decision; and
- (7) The decision should be rendered in a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decision rendered.⁹⁴

Measured against these guidelines, there was a perceptible violation of Prescott's right to administrative due process in the Bureau proceedings. To reiterate, the facts are undisputed. Bureau and DOJ do not contest that he never received the notices allegedly sent by the Bureau to him for the scheduled hearings from July 10, 2012 to September 20, 2012 *vis-à-vis* his fraudulent re-acquisition of Philippine citizenship. In fact, they *admit* in their Memorandum that these notices were "returned with the comment 'moved out.'"⁹⁵

As regards the revocation of the reacquisition of his Philippine citizenship per DOJ Resolution dated November 28, 2013, respondents do not allege, much less, adduce evidence, that Prescott was furnished a copy of the same. On the contrary, they fleetingly allege that a copy thereof was "furnished [him] in his last two known addresses"⁹⁶ as if it were already compliant with the requirement of notice. Nonetheless, he only discovered the judgment against him *by chance* when he applied for renewal of his passport which was subsequently denied.

Clearly, in violation of the requirements under *Ang Tibay*, Prescott was undoubtedly deprived of any opportunity to present his case and submit evidence to counter the allegations of fraud imputed against him. Obviously,

⁹⁴ *Id.* at 642-644.

⁹⁵ *Rollo*, Vol. 3, p. 544.

⁹⁶ *Id.* at 545.

in rendering their respective decisions, the Bureau and the DOJ likewise never accorded consideration to his defenses, much less, supporting evidence. They argue nonetheless that his right to be heard was never violated for he was able to file several pleadings seeking reconsideration of the DOJ Resolution dated November 28, 2013.

The argument does not impress.

To avoid further misconceptions moving forward, the Court underscores and clarifies anew that mere filing of a motion for reconsideration cannot cure any due process defect, especially if the same was filed precisely to raise the issue of violation of the right to due process considering that up until that point, the opportunity to be heard on the merits has remained elusive.⁹⁷

Our pronouncement in *Fontanilla v. Commission Proper*,⁹⁸ finds profound relevance in this case. There, Fontanilla likewise assailed the violation of his right to due process when he was found liable for the amount of money he and his co-worker lost. Apparently, he was never given due notice nor ordered to participate in the proceedings nor given the chance to present his side. Instead of granting him an opportunity to meet the accusations against him, the Commission on Audit (COA) Proper treated his motion for intervention as an appeal, equated the same to an opportunity to be heard, and denied it. The Court reversed, viz.:

We reject the COA's reasoning.

While we have ruled in the past that the filing of a motion for reconsideration cures the defect in procedural due process because the process of reconsideration is itself an opportunity to be heard, this ruling does not embody an absolute rule that applies in all circumstances. The mere filing of a motion for reconsideration cannot cure the due process defect, especially if the motion was filed precisely to raise the issue of violation of the right to due process and the lack of opportunity to be heard on the merits remained.

In other words, if a person has not been given the opportunity to squarely and intelligently answer the accusations or rebut the evidence presented against him, or raise substantive defenses through the proper pleadings before a quasi-judicial body (like the COA) where he or she stands charged, then a due process problem exists. This problem worsens and the denial of his most basic right continues if, in the first place, he is found liable without having been charged and this finding is confirmed in the appeal or reconsideration process without allowing him to rebut or explain his side on the finding against him.

⁹⁷ See *Barroso v. Commission on Audit*, G.R. No. 253253, April 27, 2021 [Per J. Lazaro-Javier, *En Banc*].

⁹⁸ 787 Phil. 713 (2016) [Per J. Brion, *En Banc*].

Time and again, we have ruled that the essence of due process is the opportunity to be heard. In administrative proceedings, one is heard when he is accorded a fair and reasonable opportunity to explain his case or is given the chance to have the ruling complained of reconsidered.

Contrary to the COA's posturing, it did not pass upon the merit of Dr. Fontanilla's claim that he was denied due process. Instead of asking Dr. Fontanilla to explain his side (by allowing him to submit his memorandum or calling for an oral argument as provided under Rule X, Section 3 of the COA Rules of Procedure), **the COA concluded right away that the motion for intervention, exclusion, and reconsideration had effectively cured the alleged denial of due process.** The COA failed or simply refused to realize that Dr. Fontanilla filed the motion precisely for the purpose of participating in the proceedings to explain his side.⁹⁹ (Emphases supplied, citations omitted)

Here, neither the Bureau nor the DOJ passed upon Prescott's arguments in his motions where he invariably raised violation of his right to due process. Neither did they allow him to air his defenses against the accusations against him in the complaint. Nor was he even furnished copies of the records. Notably, the Bureau and the DOJ repeatedly brushed aside his various appeals by consistently reasoning that the DOJ Resolution dated November 28, 2013 had already become final and executory, hence, immutable.¹⁰⁰ In fact, even now before the Court, they principally rely on this theory to block Prescott's attempt to seek relief.

All told, the mere fact that he filed motions for reconsideration before the Bureau and the DOJ, which nonetheless were never properly considered by Bureau and the DOJ, does not amount to a *fair and reasonable* opportunity to be heard required by the Constitution, law, and jurisprudence. Consequently, for having been rendered in violation of Prescott's fundamental right to due process, the proceedings before the Bureau as well as the DOJ Resolution dated November 28, 2013 are void *ab initio*.

The Court consistently adheres to the rule that a decision rendered without due process is *void ab initio* and may be attacked directly *or collaterally*. The cardinal precept is that where there is a violation of basic constitutional rights, courts are ousted of their jurisdiction. Any judgment or decision rendered notwithstanding such violation may be regarded as a lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever it exhibits its ugly head.¹⁰¹

So must it be.

*A petition for declaratory relief
is not the proper remedy to*

⁹⁹ *Id.* at 725-726.

¹⁰⁰ *Rollo*, Vol. 3, p. 725.

¹⁰¹ *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635 (1940) [Per J. Laurel, *En Banc*].

determine citizenship; the same may, however, be passed upon as an incident to the petition for habeas corpus

A Petition for Declaratory Relief is an action provided under Rule 63 of the Revised Rules of Court. Section 1 thereof provides:

SECTION 1. *Who may file petition.* – Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

In sum, declaratory relief is an action by any person interested in a deed, will, contract or other written instrument, executive order or resolution, to determine any question of construction or validity arising from the instrument, executive order or regulation, or statute, and for a declaration of his or her rights and duties thereunder. The only issue that may be raised in such a petition is the question of construction or validity of the provisions in an instrument or statute.¹⁰²

It requires the following elements: (1) the subject matter of the controversy must be a deed, will, contract or other written instrument, statute, executive order or regulation, or ordinance; (2) the terms of said documents and the validity thereof are doubtful and require judicial construction; (3) there must have been no breach of the documents in question; (4) there must be an actual justiciable controversy or the “ripening seeds” of one between persons whose interests are adverse; (5) the issue must be ripe for judicial determination; and (6) adequate relief is not available through other means or other forms of action or proceeding.¹⁰³

The grant of declaratory relief is discretionary on the courts. They may refuse to declare rights or to construe instruments if it will not terminate the controversy or if it is unnecessary and *improper under the circumstances*.¹⁰⁴ On this score, the Court invariably pronounced beginning with *Tan v. Republic*,¹⁰⁵ that a petition for declaratory relief is an improper remedy to secure a judicial declaration of Philippine citizenship for there is no law or rule providing such remedy, viz.:

¹⁰² See *Ferrer, Jr. v. Mayor Roco, Jr.*, 637 Phil. 310, 317 (2010) [Per J. Mendoza, Second Division].

¹⁰³ See *In the Matter of Declaratory Relief on the Validity of BIR Revenue Memorandum Circular No. 65-2012*, 868 Phil. 517, 536 (2020) [Per J. Lazaro-Javier, First Division].

¹⁰⁴ See *Zomer Development Company, Inc. v. Special Twentieth Division of the Court of Appeals*, 868 Phil. 93, 105 (2020) [Per J. Leonen, *En Banc*].

¹⁰⁵ 107 Phil. 632 (1960) [Per J. Concepcion, *En Banc*].

[U]nder our laws, **there can be no action or proceeding for the judicial declaration of the citizenship of an individual.** Courts of justice exist for the settlement of justiciable controversies, which imply a given right, legally demandable and enforceable, an act or omission violative of said right, and a remedy, granted or sanctioned by law, for said breach of right. **As an incident only of the adjudication of the rights of the parties to a controversy, the court may pass upon, and make a pronouncement relative to, their status.** Otherwise, such a pronouncement is beyond judicial power. **Thus, for instance, no action or proceeding may be instituted for a declaration to the effect that plaintiff or petitioner is married, single, or a legitimate child, although a finding hereon may be made as a necessary premise to justify a given relief available only to one enjoying said status.** At times, the law permits the acquisition of a given status, such as naturalization, by judicial decree. **But, there is no similar legislation authorizing the institution of a judicial proceeding to declare that a given person is part of our citizenry.**¹⁰⁶ (Emphasis supplied)

More, taking into consideration the nature of a proceeding for declaratory judgment, wherein relief may be sought *only to declare rights*, and not to determine or try issues, a declaratory relief proceeding is thus unavailable where the judgment would have to be made only after a judicial investigation of disputed facts.¹⁰⁷ It is therefore clear that Prescott improperly resorted to a petition for declaratory relief to seek the declaration of his Philippine citizenship. The same was thus correctly dismissed by the courts below.

But all is not lost. In *Tan*, we identified the proper instance when the citizenship of a person may be settled by the courts, i.e., “as an incident only of the adjudication of the rights of the parties to a controversy.”¹⁰⁸ In fine, if the citizenship of a person is a threshold issue in an actual controversy, the Court may pass upon the same.

Such a controversy exists here. For apart from his Petition for Declaratory Relief, Prescott also filed a Petition for *Habeas Corpus*, contending that as a Philippine citizen, he is not the proper subject of the order of deportation. Clearly, his citizenship is a threshold issue that must be determined corollary to the *habeas corpus* petition which in turn, determines the legality of his detention. To be sure, the power to deport is limited to aliens only. If the respondent to a deportation proceeding is admittedly a citizen or conclusively shown to be such, the Bureau lacks jurisdiction and its proceedings are void *ab initio* and may be summarily enjoined.¹⁰⁹

Thus, albeit the dismissal of the Petition for Declaratory Relief is in order, we may nonetheless settle once and for all Prescott’s citizenship by

¹⁰⁶ *Id.* at 633.

¹⁰⁷ See *Poco v. Commissioner of Immigration*, 123 Phil. 431, 434 (1966) [Per J. Barrera, *En Banc*].

¹⁰⁸ 107 Phil. 632 (1960) [Per J. Concepcion, *En Banc*].

¹⁰⁹ See *Chua Hiong v. Deportation Board*, 96 Phil. 665 (1955) [Per J. Labrador, *En Banc*].

treating the Petition for Declaratory Relief as incident in his Petition for *Habeas Corpus*.

***Prescott is a natural-born
Philippine citizen, hence, he
may not be legally deported***

Prescott was born on August 10, 1950. Any issue regarding his citizenship consequently falls under the aegis of the 1935 Constitution, which identifies who are considered Philippine citizens under Article IV, Section 1 thereof, viz.:

SECTION 1. The following are citizens of the Philippines:

- (1) Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.
- (2) Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.
- (3) Those whose fathers are citizens of the Philippines.
- (4) **Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.**
- (5) Those who are naturalized in accordance with law. (Emphasis supplied)

Unlike the 1973 and 1987 Constitutions, the 1935 Constitution does not automatically recognize children born to Filipino mothers as Philippine citizens. As a rule, they follow the citizenship of their alien father, unless, upon reaching the age of majority, they elect Philippine citizenship.¹¹⁰ During the child's minority, what he or she possessed was merely an inchoate right *to choose* Philippine citizenship.¹¹¹

Notably, Article IV, Section 1(4) of the 1935 Constitution, as worded, is vague as regards the particular manner and time for electing Philippine citizenship. It was only in 1941 or six years after the 1935 Constitution was ratified when Commonwealth Act No. 625 was legislated, prescribing for the first time that the election of Philippine citizenship must be done in accordance with several formal requisites, i.e., the same must be in writing, under oath, filed with the civil registry, and accompanied with an oath of allegiance to the Constitution and the Philippine government, thus:

¹¹⁰ See *Republic v. Sagun*, 682 Phil. 303 (2012) [Per J. Villarama, Jr., First Division].

¹¹¹ See *Cabiling Ma v. Commissioner Fernandez*, 639 Phil. 577 (2010) [Per J. Perez, First Division].

SECTION 1. The option to elect Philippine citizenship in accordance with subsection (4), section 1, Article IV, of the Constitution shall be expressed in a statement to be signed and sworn to by the party concerned before any officer authorized to administer oaths, and shall be filed with the nearest civil registry. The said party shall accompany the aforesaid statement with the oath of allegiance to the Constitution and the Government of the Philippines.

SECTION 2. If the party concerned is absent from the Philippines, he may make the statement herein authorized before any officer of the Government of the United States authorized to administer oaths, and he shall forward such statement together with his oath of allegations, to the Civil Registry of Manila.

Meanwhile, though both the 1935 Constitution and Commonwealth Act No. 625 are silent as to the exact period within which the election may be made, the Court in *Cueco v. Secretary of Justice and Commissioner of Immigration*,¹¹² determined that the same should be done within a “reasonable time,” i.e., three years, *subject to extension under certain circumstances such as when the person has always considered himself or herself as a Filipino*, but not exceeding seven years.

Bureau and DOJ consequently argue that Prescott was never a Philippine citizen as he himself admits that he never elected Philippine citizenship within a reasonable time after he turned 21 years old. This argument is incorrect.

Per existing jurisprudence, “election” under Article IV, Section 1(4) of the 1935 Constitution may be done in two ways: **first**, through formal election pursuant to Commonwealth Act No. 625; or **second**, through informal election, i.e., when it is evident from the positive acts of a child born to a mixed marriage that he or she chose Philippine citizenship.

The concept of informal election was first introduced in *In Re: Florencio Mallare*,¹¹³ where Florencio Mallare, who was born under the 1935 Constitution to a Chinese father and a Filipino mother, was recognized as a Philippine citizen by the Court who found his exercise of the right of suffrage upon reaching the age of majority as sufficient to show his preference for Philippine citizenship.

More than a decade later, the Court again held that the petitioner in *Co v. Electoral Tribunal of the House of Representatives*,¹¹⁴ indubitably, though implicitly, elected Philippine citizenship through his numerous categorical acts which all revealed such intention, to wit:

¹¹² 115 Phil. 90 (1962) [Per C.J. Concepcion, *En Banc*].

¹¹³ 158 Phil. 50 (1974) [Per J. Fernandez, *En Banc*].

¹¹⁴ 276 Phil. 758 (1991) [Per J. Gutierrez, *En Banc*].

The respondent was born in an outlying rural town of Samar where there are no alien enclaves and no racial distinctions. The respondent has lived the life of a Filipino since birth. His father applied for naturalization when the child was still a small boy. He is a Roman Catholic. He has worked for a sensitive government agency. His profession requires citizenship for taking the examinations and getting a license. He has participated in political exercises as a Filipino and has always considered himself a Filipino citizen. There is nothing in the records to show that he does not embrace Philippine customs and values, nothing to indicate any tinge of alien-ness no acts to show that this country is not his natural homeland. The mass of voters of Northern Samar are frilly aware of Mr. Ong's parentage. They should know him better than any member of this Court will ever know him. They voted by overwhelming numbers to have him represent them in Congress. Because of his acts since childhood, they have considered him as a Filipino.

The filing of sworn statement or formal declaration is a requirement for those who still have to elect citizenship. For those already Filipinos when the time to elect came up, there are acts of deliberate choice which cannot be less binding. Entering a profession open only to Filipinos, serving in public office where citizenship is a qualification, voting during election time, running for public office, and other categorical acts of similar nature are themselves formal manifestations of choice for these persons.¹¹⁵

Meanwhile, in *Cabiling Ma v. Fernandez, Jr.*,¹¹⁶ while the Court did not recognize mere exercise of the right to suffrage, assumption of public office, continuous and uninterrupted stay in the Philippines, and other similar acts showing exercise of Philippine citizenship as equivalent to formal election, the petitioners were nonetheless deemed Filipinos in view of the fact that they already formally elected Philippine citizenship but only failed to register the same beyond the prescribed timeframe. In the meantime, they have consistently and continuously done positive acts of citizenship manifesting their choice to become Philippine citizens. The Court stated:

We are not prepared to state that the mere exercise of suffrage, being elected public official, continuous and uninterrupted stay in the Philippines, and other similar acts showing exercise of Philippine citizenship can take the place of election of citizenship. What we now say is that where, as in petitioners' case, the election of citizenship has in fact been done and documented within the constitutional and statutory timeframe, the registration of the documents of election beyond the frame should be allowed if in the meanwhile positive acts of citizenship have publicly, consistently, and continuously been done. The actual exercise of Philippine citizenship, for over half a century by the herein petitioners, is actual notice to the Philippine public which is equivalent to formal registration of the election of Philippine citizenship.¹¹⁷

As eloquently opined by the esteemed Associate Justice Alfredo Benjamin S. Caguioa (Justice Caguioa) during the Court's deliberation, the special circumstances availing in *Cabiling Ma* and the logic applied by the Court therein may also be applied in favor of Prescott.

¹¹⁵ *Id.* at 785–786.

¹¹⁶ 639 Phil. 577 (2010) [Per J. Perez, First Division].

¹¹⁷ *Id.* at 593.

It is true that Prescott never, by *formal* deed, elected Philippine citizenship within a reasonable time upon reaching 21 years old. The Court finds, however, that the Oath of Allegiance executed by Prescott in 2008 when he re-acquired Philippine citizenship under Republic Act No. 9225 constitutes substantial compliance with the formal election requirements under Commonwealth Act No. 625. His Oath of Allegiance reads:¹¹⁸

**OATH OF ALLEGIANCE
TO THE
REPUBLIC OF THE PHILIPPINES**

I, WALTER MANUEL FERNANDEZ PRESCOTT, solemnly swear that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines, and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion[.]

Sgd.
WALTER MANUEL FERNANDEZ
PRESCOTT
Affiant

As aptly discussed by Justice Caguioa in his Concurring Opinion, the requirement to formally elect Philippine citizenship under Article IV, Section 1(4) of the 1935 Constitution in relation to Commonwealth Act No. 625 merely ensures the complete loyalty, fidelity, and allegiance to the country of the persons electing Philippine citizenship even as they were born to alien fathers. Notably, this assurance is precisely what was encapsulated in the Oath of Allegiance sworn by Prescott in 2008. More important, the apprehension of disloyalty which the 1935 sought to eliminate is non-existent in Prescott's case. For what he has not formally spoken or written in words when he reached the age of 21, and years thereafter, he unequivocally expressed through his consistent and deliberate actions throughout the course of his entire life which totally evince of his loyalty, love, and fealty to the Philippines.

While it is undeniable that it took Prescott 30 years after reaching 21 years old before he executed his Oath of Allegiance pursuant to Republic Act No. 9225, his peculiar and unique circumstances, to this Court, absolutely justify an *exception* from the prescribed timeframe. To be sure, the time within which formal election must be made was never enshrined in Commonwealth Act No. 625 but was merely laid down in jurisprudence. Even then, We are cognizant that such period, when warranted by special circumstances, *as here*, may be extended. In *Cueco v. Secretary of Justice and Commission of Immigration*,¹¹⁹ the Court in fact, stated:

¹¹⁸ *Rollo*, Vol. 1, p. 155.

¹¹⁹ 115 Phil. 90 (1962) [Per C.J. Concepcion, *En Banc*].

It is true that this clause has been construed to mean a reasonable time after reaching the age of majority, and that the Secretary of Justice has ruled that three (3) years is the reasonable time to elect Philippine citizenship under the constitutional provision adverted to above, **which period may be extended under certain circumstances, as when the person concerned has always considered himself a Filipino.** For this reason, petitioner introduced evidence to the effect that he is referred to as a Filipino in his birth certificate, in his marriage contract and in the birth certificates of his children; that he married a Filipina; and that he enlisted in the Philippine guerrilla forces in December, 1942.¹²⁰ (Emphasis supplied).

From the undisputed facts, We are convinced that Prescott has always considered himself a Filipino. The facts are replete with incontrovertible proofs of this choice:

First. He was born and raised in the Philippines. He spent his formative years and early adulthood knowing no other culture and recognizing no other terrain but those of the Philippines. He maintained his residence, was educated, earned his livelihood, and formed his family here. As a result, he lost the very American citizenship which Bureau and DOJ insist he kept and continued to maintain.¹²¹

Second. After he lost his American citizenship, he consistently identified himself as Filipino in all his documents, including his Marriage Contract¹²² and the Certificate of Live Birth of his first child Jeffrey.¹²³

Third. When he was in the USA for his employment with the World Bank, he had to be *naturalized* to become an American citizen. This is most telling. For only aliens need to be naturalized to be conferred citizenship. If indeed Prescott had been an American all along, he would not have had to obtain American citizenship anew, much less, be naturalized to become one.

Fourth. Even when he became a naturalized American citizen, he never really abandoned being a Filipino. In fact, he would often travel back to the Philippines, and, significantly, he did so with a "*balikbayan*" status.

The Balikbayan Program was instituted through Republic Act No. 6768 which defined "*balikbayan*" as "*a Filipino citizen who has been continuously out of the Philippines for a period of at least one year, a Filipino overseas worker, or a former Filipino citizen and his family, as this term is defined hereunder, who had been naturalized in a foreign country and comes or returns to the Philippines.*"¹²⁴

¹²⁰ *Id.* at 93-94.

¹²¹ *Rollo*, Vol. 1, pp. 5 & 144.

¹²² *Id.* at 197.

¹²³ *Id.* at 198.

¹²⁴ Republic Act No. 6768 (1989), Section 2(a).

Clearly, he would not have been recognized by the Bureau as a *balikbayan* if he were not, prior to his naturalization, a Philippine citizen as required under the Balikbayan Program of Republic Act No. 6768.

Fifth. He obtained dual citizenship when he reacquired his Philippine citizenship under Republic Act No. 9225. The same was duly conferred upon him not only by the Embassy of the Philippines to the USA but also with the confirmation by no less than the DFA. He was even issued an Identification Certificate,¹²⁵ recognizing him as Filipino, as well as a Philippine passport.¹²⁶

Clearly, the government, through its various agencies, consistently recognized Prescott as a Philippine citizen, and, in numerous instances, conferred upon him the status and privileges available only to citizens of the Philippines.

Lastly. When he retired, he had at his absolute disposal the option to remain in the USA and spend his final years there. Yet, he chose to leave everything he had and return to the Philippines to settle for good even when his own wife left him to return to the USA where she remains until now.¹²⁷

True, Prescott was issued an ACR on January 12, 1951, when he was less than one year old, and only because having been born under the 1935 Constitution, he derived his citizenship as a minor from his American father. Hence, the ACR simply meant that he had an option, within a reasonable time upon reaching 21 years old, to elect Philippine citizenship, which, as shown, he categorically, albeit, informally did through his positive acts.

In any case, even if Prescott's Oath of Allegiance in 2008 cannot be considered as his formal election, he is still deemed a natural-born Filipino pursuant to the 1961 Convention on Reduction of Statelessness. To recall, he lost his American citizenship when he was 26 years old for failing to return to the USA within the period prescribed under its law. Neither was he recognized as a Philippine citizen at the time under the 1935 Constitution. In fine, he became, as a result of the operation of American and Philippine laws, a stateless person¹²⁸ as defined under Article 1(1) of the Convention Relating to the Status of Stateless Persons, to which the Philippines acceded in 2011.

Notably, the Philippines, in 2022, acceded to the 1961 Convention on Reduction of Stateless, which obliges a Contracting State to grant its nationality to a person born in its territory who would otherwise be stateless, including an instance cogently cited by Justice Caguioa where such person

¹²⁵ *Rollo*, Vol. 1, p. 208.

¹²⁶ *Id.* at 210.

¹²⁷ *Id.* at 155.

¹²⁸ "Stateless person" means a person who is not considered a national by any State under the operation of its law.

was unable to acquire the nationality of the State in whose territory he or she was born because he or she has passed the age to lodge an application, provided that the nationality of one of his or her parents belongs to such State, viz.:

Article 1.

4. A Contracting State shall grant its nationality to a person who would otherwise be stateless and who is unable to acquire the nationality of the Contracting State in whose territory he was born because he has passed the age for lodging his application or has not fulfilled the required residence conditions, if the nationality of one of his parents at the time of the person's birth was that of the Contracting State first above mentioned. If his parents did not possess the same nationality at the time of his birth, the question whether the nationality of the person concerned should follow that of the father or that of the mother shall be determined by the national law of such Contracting State. If application for such nationality is required, the application shall be made to the appropriate authority by or on behalf of the applicant in the manner prescribed by the national law. Subject to the provisions of paragraph 5 of this Article, such application shall not be refused.

There is no doubt that the 1961 Convention on Reduction of Statelessness may apply to Prescott who was born in 1950 since Article 12, Section 2, thereof explicitly states that "[t]he provisions of paragraph 4 of Article 1 of this Convention shall apply to persons born *before* as well as to persons born *after* its entry into fore."

More, even prior to the Philippines' accession to the 1961 Convention on Reduction of Statelessness, the Court already declared that its principles are nonetheless binding to the Philippines as generally accepted principles of international law.¹²⁹ As such, pursuant to Article 1(4) of the Convention, the Philippines had the obligation to recognize Prescott, born to a Filipino mother, as a Philippine citizen after failing to formally elect Philippine citizenship within the prescribed time since he would have otherwise become a stateless person. This grant of nationality to Prescott, to this Court, must be reckoned from his birth if we are to give full life to the Philippines' commitment under the Convention. Most especially since, we have long sought to correct the anomalous discrimination between children born to Filipino fathers and those born to Filipino mothers and alien fathers under the 1935 Constitution. In *Co v. Electoral Tribunal of the House of Representatives*,¹³⁰ we acknowledged:

The provision in question was enacted to correct the anomalous situation where one born of a Filipino father and an alien mother was automatically granted the status of a natural-born citizen while one born of a Filipino mother and an alien father would still have to elect Philippine citizenship. If one so elected, he was not, under earlier laws, conferred the status of a natural-born.

¹²⁹ See *Poe-Llamanzares v. COMELEC*, 782 Phil. 292 (2016) [Per J. Perez, *En Banc*]; see also art. II, sec. 2 of the 1987 Constitution.

¹³⁰ 276 Phil. 758 (1991) [Per J. Gutierrez, Jr., *En Banc*].

Under the 1973 Constitution, those born of Filipino fathers and those born of Filipino mothers with an alien father were placed on equal footing. They were both considered as natural-born citizens.

Hence, the bestowment of the status of “natural-born” cannot be made to depend on the fleeting accident of time or result in two kinds of citizens made up of essentially the same similarly situated members.

It is for this reason that the amendments were enacted, that is, in order to remedy this accidental anomaly, and, therefore, treat equally all those born before the 1973 Constitution and who elected Philippine citizenship either before or after the effectivity of that Constitution.

The Constitutional provision in question is, therefore curative in nature. The enactment was meant to correct the inequitable and absurd situation which then prevailed, and thus, render those acts valid which would have been nil at the time had it not been for the curative provisions.¹³¹

In sum, having formally elected Philippine citizenship under the 1935 Constitution, albeit belatedly, Prescott is considered a natural-born citizen following Article IV, Section 1(3)¹³² in relation to Section 2¹³³ of the 1987 Constitution. Consequently, he was eligible to reacquire Philippine citizenship under Republic Act No. 9225.

The Petition for Habeas Corpus must be granted since Prescott, being a Philippine citizen, is not the proper subject of deportation

Habeas corpus, otherwise known as the “great writ of liberty,” is an extraordinary, summary, and equitable writ,¹³⁴ as provided under Rule 102 of the Revised Rules of Court. Section 1 thereof states:

SECTION 1. *To what habeas corpus extends.* — Except as otherwise expressly provided by law, the writ of *habeas corpus* shall extend to all cases of illegal confinement or detention by which any person is deprived of his [or her] liberty, or by which the rightful custody of any person is withheld from the person entitled thereto.

A writ of *habeas corpus* is a speedy and effectual remedy to relieve persons from unlawful restraint. Broadly speaking, it extends to all cases of illegal confinement or detention by which any person is deprived of his or her

¹³¹ *Id.* at 784.

¹³² SECTION 1. The following are citizens of the Philippines: . . . (3) Those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority; . . .

¹³³ SECTION 2. Natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens.

¹³⁴ See *In the Matter of the Petition for Habeas Corpus, SSgt. Osorio v. Asst. State Prosecutor Navera, et al.*, 826 Phil. 643, 652 (2018) [Per J. Leonen, Third Division].

liberty, or by which the rightful custody of any person is withheld from the person entitled thereto. The most basic criterion for the issuance of the writ is that the individual seeking such relief is illegally deprived of his or her freedom of movement or placed under some form of *illegal* restraint.¹³⁵ Its primary purpose is to inquire into all manner of involuntary restraint and to relieve a person therefrom if such restraint is illegal.¹³⁶

To recall, Prescott was arrested and is detained pursuant to a warrant of deportation following the revocation of his reacquisition of Philippine citizenship. As discussed, however, Bureau and DOJ have no jurisdiction to arrest him or to lawfully hold him in detention for two reasons: *first*, the Bureau proceedings as well as the DOJ Resolution dated November 28, 2013 are void *ab initio* for having been issued in patent violation of Prescott's right to due process; and *second*, the Bureau has no jurisdiction to deport Prescott since he is not an alien but a natural-born Philippine citizen.

These circumstances are more than sufficient to render void the proceedings before the Bureau and the subsequent issuances of the DOJ involving Prescott. To repeat, where there is a deprivation of a person's constitutional rights, the court that rendered the judgment is deemed ousted of its jurisdiction and *habeas corpus* is the appropriate remedy to assail the legality of his detention. The inquiry on a writ of *habeas corpus* is addressed, not to errors committed by a court within its jurisdiction, but to the question of whether the proceeding or judgment under which the person has been restrained is a complete nullity. The concern is not merely whether an error has been committed in ordering or holding the petitioner in custody, but whether such error is sufficient to render void the judgment, order, or process in question.¹³⁷

Prescott's immediate release is therefore in order. The Bureau is devoid of any legal basis to hold him in detention. The OSG ripostes though that *habeas corpus* does not lie against the Bureau since it is PAO which currently holds Prescott in their custody.

We are not impressed.

Notably, during the March 13, 2023 hearing, the PAO manifested that though Prescott remains within the PAO premises, he is not free to leave as he wishes. In fact, a Bureau officer is deployed to watch guard over him. If at all, PAO is only acting as the Bureau's agent by harboring and taking care of

¹³⁵ See *In Re: Writ of Habeas Corpus for Abellana v. Judge Paredes*, 856 Phil. 516, 532 (2019) [Per J. Caguioa, Second Division].

¹³⁶ See *In the Matter of Declaratory Relief on the Validity of BIR Revenue Memorandum Circular No. 65-2012*, 868 Phil. 517, 536 (2020) [Per J. Lazaro-Javier, First Division].

¹³⁷ See *In Re: Writ of Habeas Corpus for Abellana v. Judge Paredes*, 856 Phil. 516, 532 (2019) [Per J. Caguioa, Second Division].

Prescott within its premises. To recall, it is the Bureau which agreed to release him to the PAO *temporarily* in view of his ailing condition.¹³⁸ For all intents and purposes, therefore, it is clear that the Bureau continues to have physical and legal custody over Prescott.

To recall, it was the Bureau which arrested Prescott pursuant to a warrant of deportation. From that point onwards, Prescott has been in its legal custody as contemplated under the law. A person is considered to be in the custody of the law (a) when *he or she is arrested either by virtue of a warrant of arrest*, as here, or by warrantless arrest; or (b) when he or she has voluntarily submitted himself or herself to the jurisdiction of the proper authorities.¹³⁹

Prescott has been detained for seven years now. He is already 73 years old and suffering from several medical conditions. His only wish is to spend his remaining years in the country which he has always considered his home and his motherland. He deserves to be set free since long ago. In fact, he should not have been deprived of his liberty and be treated as an overstaying alien in the first place. For he is, indeed, a natural born Filipino. His actions, more than words, eloquently speak of the decision he made in electing Filipino citizenship immediately upon reaching the age of 21.

ACCORDINGLY, the Petition is **GRANTED**. The Decision dated June 25, 2021 and Resolution dated August 15, 2022 of the Court of Appeals in CA-G.R. SP No. 161957 are **REVERSED**. The Deportation Order issued against petitioner Walter Manuel F. Prescott under Bureau of Immigration Resolution dated March 29, 2016 in D.C. No. SBM/LD-15-08/07-659 is declared **VOID**. The Petition for *Habeas Corpus* of petitioner Walter Manuel F. Prescott is **GRANTED** and the Bureau of Immigration and the Department of Justice and their agents, representatives, or persons acting in their place or stead, are **ORDERED** to **RELEASE** petitioner Walter Manuel F. Prescott immediately. They are required to submit their compliance within five days from notice hereof.

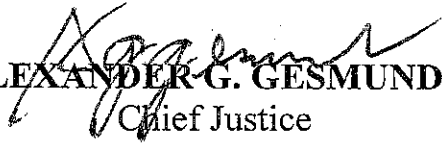
SO ORDERED.


AMY C. LAZARO-JAVIER
Associate Justice


¹³⁸ *Rollo*, Vol. 2, p. 1111.

¹³⁹ *See Paderanga v. Court of Appeals*, 317 Phil. 862, 871 (1995) [Per J. Regalado, Second Division].

WE CONCUR

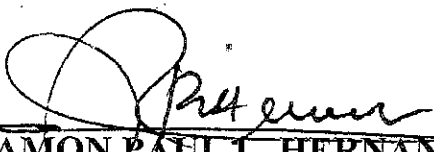

ALEXANDER G. GESMUNDO
Chief Justice

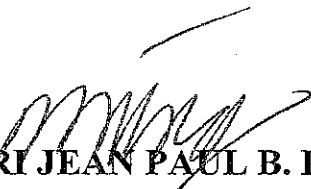
See separate concurring opinion


MARVIC M.V.F. LEONEN
Senior Associate Justice

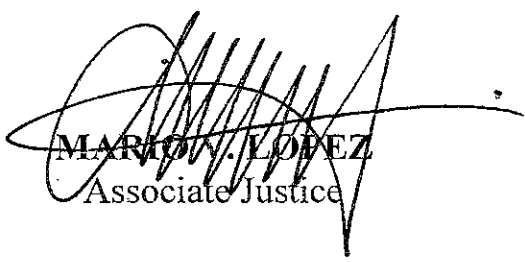

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

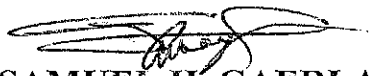
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Opinion*

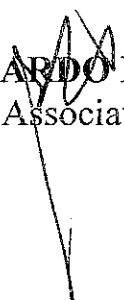

RAMON PAUL L. HERNANDO
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice

(no part and
on official leave)
RODIL V. ZALAMEDA
Associate Justice


MARION N. LOPEZ
Associate Justice


SAMUEL H. GAERLAN
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JHOSEPH V. LOPEZ
Associate Justice

(on official leave)
JAPAR B. DIMAAMPAO
Associate Justice

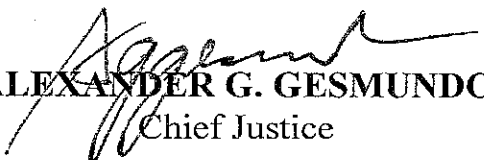
(no part and
on official business)
JOSE MIDAS P. MARQUEZ
Associate Justice


ANTONIO T. KHO, JR.
Associate Justice


MARIA FELOMENA D. SINGH
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's En Banc.


ALEXANDER G. GESMUNDO
Chief Justice